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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,578	10/19/2000	Mark Salerno	948-5	6508
23869	7590	06/02/2006	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				MCALLISTER, STEVEN B
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/692,578	SALERNO, MARK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven B. McAllister	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 51-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 51-65 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 60 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 60 recites an activity level switch that when activated changes the activity level without the need to load new data. However, activating the switch enters or loads new data because it enters data into the system that the current activity level has changed or is at a certain level.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-53, 56-57 and 63-65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage (6,026,372) in view of Walker et al (6,298,331).

Savage shows a processing circuit; a food product status switch associated with a storage location and coupled to the circuit, comprising the ECR entry panel 21 and means for providing the "finished input" 13 (see, e.g. col. 4, lines 55-60); and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first and second states associated with an occupied storage location and an unoccupied storage location, respectively and in response to the food product status switch. Savage does not explicitly show a storage timer associated with the storage location or indicating a third status when storage time of a food product has been exceeded.

Walker et al show a storage timer associated with the storage location or a indicating a third status when storage time of a food product has been exceeded (see e.g., Fig. 8). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Savage by providing the storage time and status indicator as taught by Walker et al in order to reduce waste.

As to claim 52, Savage in view of Walker show the status indicator having a fourth state showing that cooking should commence. It does not explicitly show that the fourth state starts when the storage time exceeds difference between the acceptable hold time and the cook time. However, the examiner takes official notice that to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary

skill in the art to further modify the method of Savage by providing a fourth state in the conditions claimed in order to avoid out of stock, or low stock, situations.

As to claims 56 and 57, Savage in view of Walker et al show a remote pan fill level display.

As to claims 58 and 59, Savage in view of Walker et al show a current activity level stored in memory (see "Total Quantity" per time period) that corresponds to a rate of sale of a food product, the pan fill level changing as a function of the activity level (see e.g., Fig. 4).

As to claim 60, Savage in view of Walker et al show an activity level switch, comprising the logical switch within the computer, the current activity level changing in response to the automated activation of the switch, for instance as time switches from 11:15 to 11:30, without the need to load new data.

As to claim 61, Savage in view of Walker et al show changing the activity level in response to time of day or events, comprising changing the activity level according to time of day (see Fig. 4).

As to claim 62, Savage in view of Walker et al show an activity level display, comprising at least the manager's display, located remotely from the storage location.

As to claims 63 and 64, Savage in view of Walker et al show display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch. They do not explicitly show that the menu is selectable.

However, the examiner takes official notice that selectable menus associated with POS terminals are notoriously old and well known in the art. It would have been

obvious to one of ordinary skill in the art to further modify the method of Savage by providing a selectable menu in order to provide a simple method of operating the POS terminal.

As to claim 65, Savage in view of Walker et al show all elements except that the food product status switch is in alignment with the food product pan in the storage area. However, the examiner takes official notice that locating the food product status switch proximate to the food product pan is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

Claims 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage in view of Walker et al as applied to claim 51 above, and further in view of Koether (5,875,430)

Savage in view of Walker et al show all elements except an active switch associated with the storage area wherein the indicator has a seventh state indicating that the area is not being used. Koether shows these elements (e.g., Fig. 7A). It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing these elements in order to prevent malfunctioning apparatus from being used until it has been repaired.

#### ***Response to Arguments***

Applicant's arguments filed 2/22/2006 have been fully considered but they are not persuasive.

As to whether Savage shows a "current activity level", the examiner believes that reference does show this element. Savage shows an activity level represented by a total quantity desired per time period. Since the quantity required is per a period of time, it represents a rate. Also, it is noted that the activity level is claimed as "corresponding" to a rate of sale, not that it is the rate of sale. The quantity of items required per period of time corresponds to the rate of sales during that time. Also, the activity is believed to be "current" because, although it is based on historical conditions and requirements, it is modified in the "Special Add-On Quantity" so as to reflect current conditions according to weather, etc., so that the resultant Total Quantity is intended to reflect current needs.

As to claim 60, the examiner notes that new data is being entered when the physical activity level switch is activated by a user in order to adjust the activity level and the associated pan fill levels. It is noted that regarding claim 61, the examiner agrees that the claimed invention changes the activity level without the loading of new data.

Again regarding claim 60, it is noted that the computer of Savage has physical switches which are activated according to the logic of its programming. As time changes, these switches are activated and cause the current activity level to change.

### ***Conclusion***

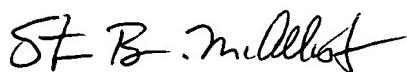
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (571) 272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven B. McAllister  
Primary Examiner  
Art Unit 3627



Steven B. McAllister

STEVE B. MCALLISTER  
PRIMARY EXAMINER